

FILED 23 OCT '19 10:42 USDC-ORP
In the US District Court for the District of Oregon
Benjamin Barber
vs
Oregon, et al
Case no 19-cv-01631-YY
Motion for Preliminary Injunction

Benjamin Barber seeks a preliminary injunction enjoining operation of ORS 163.472, and his present incarceration pursuant to 17 USC § 502, 28 USC § 1651, 2283

ORS 163.472 is a content based, viewpoint based criminal restriction of speech, that requires a pre publication license (a prior restraint), that is completely preempted by the Copyright act, and is a heckler's veto of speech

Barber is likely to prevail on the merits, because the Supreme Court has never upheld a prior restraint of pure speech see matter of Providence Journal Company 820 F.2d 1342; Content based speech restrictions are presumptively invalid see united states v. Playboy Entertainment Group 529 US 803, 817, and the government bears the burden to rebut that presumption; There is a heavy presumption against the validity of a prior restraint Bantam Books, Inc v. Sullivan 372 US 58, 70; Statutes that are preempted by the Copyright Act 17 USC § 301 arise under federal law and are under the exclusive subject matter jurisdiction of the District Court see Rociszewski v. Arete Associates Inc 1 F 3d 225, 232-233 see also Voltage Pictures LLC v. Doe (USDC. D. OR) 6:14-cv-816-mc at 2-3

The balance of equities tip in the favor of the plaintiff: also because "damage from a prior restraint -- even a prior restraint of the shortest duration -- is extraordinarily grave" *Columbia Broadcasting Sys v. United States* District Court for the Central Dist. of Cal. 729 F.2d 1174, 1175 (citing *Elrod v. Burns* 427 US 347, 373) and "prevent harm to first Amendment rights that would occur" *In re Abestos School Litigation* 46 F.3d 1284, 1286. Moreover to prevent state Courts from usurping exclusive district Court jurisdiction over copyright claims or claims completely preempted by the Copyright act see *Goldblum v. National Broadcasting Company* 584 F.2d 1907 n.2

Younger abstention does not apply because: state remedies have been exhausted see certificate of exhaustion; the statute ORS 163.472 is flagrantly unconstitutional because content and viewpoint speech restrictions are flagrantly unconstitutional. See *Kime v United States* 459 US 949, 954; *Sorrell v IMS Health Inc* 564 US 552, 571. So is acting "manifestly or palpably beyond the judges authority" *Bud Antle, Inc v. Barbosa*, 106 F.3d 406 (quoting *Spalding v. Vilas* 161 US 483, 498) when a statute is completely preempted see also *Bud Antle Inc v. Barbosa* 415 F.3d 1261, 1272-73; *Gartrell Construction v. Aubrey* 940 F.2d 437, 441; *Champion International Corp v. Brown* 731 F.2d 1406; Moreover prosecuting persons for exercise of protected rights is vindictive *United States v. Jenkins* 504 F.3d 694, 699-700 (citing *Goodwin*, 457 US at 373, 384, 102 Sct 2485) and vindictive prosecutions are made in bad faith see *Krahm v. Graham* 461 F.2d 703 (citing *Dombrowski v. Pfister* 380 US 489-490)

It is also true that multiple prosecutions are involved for exercise of protected rights, at least several dozen in Oregon; There is no state interests in either suppressing lawful speech, exceeding its subject matter jurisdiction *Ex parte Siebold* 100 US 371, 376-377, or enforcing completely preempted laws *Pennis v. Hart* 724 F.3d 1249, 1254, *Burnham v Superior Court of Cal., County of Marin* 495 U.S. 604, 609

As explained in *Polykoff v. Collins* 516 F.2d 1326, 1332; *Cebbos v Judges of Superior Court, Santa Clara County* 883 F.2d 810, 814; *Chaulk Services Inc v. Massachusetts Commission Against Discrimination* 70 F.3d 1370 (collecting cases) how to determine when abstention is appropriate under *Younger v. Harris*

Moreover 17 USC § 511 waives all sovereign immunity, 11th Amendment immunity, and any other form of sovereign immunity and requires that a public employee can be sued the same way as any private individual. Congress passed this to clarify the intention of Congress after the US Supreme Court handed down a decision stating Congress should clearly state their intention. Congress passed 17 USC § pursuant to Article I Section 3, 8 and Amendment 14 § 5, and to satisfy identical treaty obligations such as in NAFTA and others see *Missouri v. Holland* 252 US 416 (1920) (Congress can waive state sovereignty by treaty). See also WTO, Berne, North American Copyright Convention, International Copyright Union, WIPO, USMCA (NAFTA replacement).